

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Continuation application of:

Barry K. Michelson, M.D.

Serial No: (Cont. of 10/685,776)

Filed: December 19, 2003

For: SPINAL IMPLANT FOR INSERTION  
BETWEEN VERTEBRAL BODIES

Prior Application Information:

Group Art Unit: 3764

Examiner: M. Brown



MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**CONTINUING APPLICATION TRANSMITTAL**

Transmitted herewith for filing is a ☒ Continuation ☐ Divisional ☐ Continuation-In-Part application under 37 C.F.R. § 1.53(b) of prior patent application No. 10/685,776, filed October 15, 2003.

- ☐ Applicant claims small entity status under 37 C.F.R. §§ 1.9 and 1.27.
- ☒ 18 total application pages including specification, claims (1 total and 1 independent), and abstract are enclosed.
- ☐ A newly executed Declaration and Power of Attorney ☐ is enclosed ☐ will follow.
- ☒ A copy of the Declaration and Power of Attorney from the prior application is enclosed.
- The entire disclosure of the prior application, from which an oath or declaration is supplied, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.
- ☒ 7 sheets of formal drawings (A4 paper; Figs. 1-5) are enclosed.
- ☐ The prior application is assigned of record to: \_\_\_\_\_.
- ☒ The power of attorney in the prior application is to at least one of the following: MARTIN & FERRARO, LLP; Thomas H. Martin, Reg. No. 34,383; Amedeo F. Ferraro, Reg. No. 37,129; and Todd M. Martin, Reg. No. 42,844.
- ☐ The power appears in the original Declaration of the prior application.
- ☒ Since the power does not appear in the original Declaration, a copy of the Revocation of Original Power of Attorney and Grant of New Power of Attorney in the prior application is enclosed.
- ☐ A certified copy of \_\_\_\_\_ Patent Application No. \_\_\_\_\_ filed \_\_\_\_\_ from which priority is claimed under 35 U.S.C. § 119 is enclosed.
- ☒ Information Disclosure Statement (IDS) with Form PTO-1449 is enclosed.
- ☐ Amend the specification by rewriting paragraph 1 on page 1 to read as follows:  
--This is a ☐ continuation ☐ divisional of application Serial No. \_\_\_\_\_, filed \_\_\_\_\_, and claims benefit of U.S. Provisional application No. \_\_\_\_\_, filed \_\_\_\_\_, all of which are incorporated herein by reference.--
- ☐ Cancel Claims \_\_\_\_\_.

☐ An Amendment is enclosed.

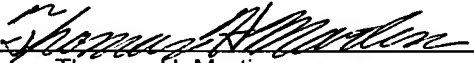
CALCULATION OF FEES							
ITEM		TOTAL NO. OF CLAIMS		NO. OF CLAIMS OVER BASE	LG/SM \$ ENTITY FEE		\$ FEE
A	TOTAL CLAIMS FEE	1	-20	0	LG=\$18 SM=\$9	x\$18	-0-
B	INDEPENDENT CLAIMS FEE*	1	-3	0	LG=\$86 SM=\$43	x\$86	-0-
C	MULTIPLE-DEPENDENT CLAIMS FEE				LARGE ENTITY FEE = \$290 SMALL ENTITY FEE = \$145		\$ -0-
D	BASIC FEE				LARGE ENTITY FEE = \$770 SMALL ENTITY FEE = \$385		\$ 770.00
E	TOTAL FILING FEE (ADD TOTALS FOR LINES A, B, C AND D)						\$ 770.00

- ☒ Also enclosed is Request for interference under 37 C.F.R. §1.604.
- ☒ A check in the amount of \$770.00 to cover the above fees is enclosed.
- ☒ Correspondence Address: Customer No. 22882  
Martin & Ferraro, LLP  
1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030
- ☒ The Commissioner is hereby authorized to charge any deficiency for the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-1068. **A copy of this sheet is enclosed.**
- ☒ Any additional filing fees required under 37 C.F.R. § 1.16
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

**PETITION FOR EXTENSION.** If any extension of time is necessary for the filing of this application, including any extension in the parent application, Serial No. 10/685,776, filed October 15, 2003, for the purpose of maintaining copendency between the parent application and this application, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to our Deposit Account No. 50-1068. A duplicate copy of this paper is enclosed for use in charging the deposit account.

Respectfully submitted,  
MARTIN & FERRARO LLP

Date: December 19, 2003

By:   
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Gary K. Michelson, M.D. )  
Serial No.: (Cont. of 10/685,776) ) (Group Art Unit: 3764)  
Filed: December 19, 2003 ) (Examiner: M. Brown)  
For: SPINAL IMPLANT FOR )  
INSERTION BETWEEN )  
VERTEBRAL BODIES )

MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**CERTIFICATE OF MAILING VIA U.S. EXPRESS MAIL**

Express Mail Mailing Label No. ET692326444US

Date of Deposit: December 19, 2003

I hereby certify that:

1. Continuing Application Transmittal form (in duplicate)
2. 18 application pages including specification, claims (1 total and 1 independent), and abstract
3. Copy of Declaration and Power of Attorney from prior application
4. 7 sheets of formal drawings (A4 paper; Figs. 1-5)
5. Copy of Revocation of Original Power of Attorney and Grant of New Power of Attorney from prior application
6. Information Disclosure Statement with Form PTO-1449
7. Request for Interference Under 37 C.F.R. § 1.604
8. Check in the amount of \$770.00 (filing fee)
9. Self-addressed return postcard receipt

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service with sufficient postage under 37 C.F.R. § 1.10 on the date indicated above and are addressed to:

MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Date: December 19, 2003

  
Sandra L. Blackmon

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Gary K. Michelson, M.D. )  
Serial No.: (Cont. of 10/685,776) ) (Group Art Unit: 3764)  
Filed: December 19, 2003 ) (Examiner: M. Brown)  
For: SPINAL IMPLANT FOR )  
INSERTION BETWEEN VERTEBRAL )  
BODIES )

MS PATENT APPLICATION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.604**

Applicant hereby requests an interference with U.S. Application No. 10/222,571  
(U.S. Publication No. 2002/0193881) to Shapiro et al. (hereinafter, "Shapiro '881")  
pursuant to 37 C.F.R. § 1.604(a). A proposed count is attached hereto.

Claim 22 of Shapiro '881 corresponds to claim 1 of the proposed count. Claim 1  
of the present application also corresponds to claim 1 of the proposed count.

Applicant requests an interference with Shapiro '881 because the  
aforementioned claim of Shapiro '881 covers subject matter which was invented by  
Applicant prior to the earliest priority date of Shapiro '881.

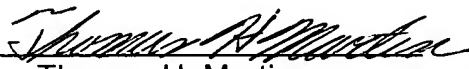
Applicant submits that the subject matter of claim 1 of the proposed count is fully supported by Applicant's original disclosure, for example, on page 6, lines 8-15 and page 12, lines 22-25. The Examiner is requested to declare an interference between the present application and U.S. Application No. 10/222,571.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: December 19, 2003

By:   
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030

**PROPOSED COUNT UNDER 37 C.F.R. § 1.604(a)(1)**

1. A device for insertion between two boney structures for maintaining spacing and facilitating bone fusion comprising:
  - an elongated body having an outer surface extending along a longitudinal axis between a distal end and a proximal end;
  - a helical thread pattern formed around at least a portion of said elongated body and defining a forward insertion rotation direction and a backward unscrewing rotation direction; and
  - means for impaling adjacent bone structures to resist backward rotation of said elongated body once it is inserted into bone.